APPEAL NO. 040129
FILED MARCH 4, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on December 29, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and had disability from _____ through September 16, 2003. On January 16, 2004, the Director of Hearings issued an Order to Correct Clerical Error, reflecting that the claimant sustained a compensable injury on (correct date of injury), and had disability from June 21 through September 16, 2003. The carrier appeals these determinations and asserts that the hearing officer erred in admitting Claimant's Exhibit No. 6. The appeal file contains no response from the claimant.

DECISION

Affirmed.

The appellant (carrier) asserts that the hearing officer erred in admitting Claimant's Exhibit No. 6. The evidence reflects that the carrier objected only to page 7 of that exhibit on the basis that it had not been timely exchanged. The hearing officer reserved ruling on the aforementioned page of the exhibit and, in fact, never made a ruling on its admission. However, the decision and order reflects that the entire exhibit was admitted. In order to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been held that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The page of the exhibit in question purports to show that that the claimant was restricted from working for the period beginning on August 7 and ending on September 8, 2003. As there is no indication that the hearing officer based his disability determination on the page of the exhibit in question, any error in the admission of the document does not rise to the level of reversible error.

Whether the claimant sustained a compensable injury and had disability were factual question for the hearing officer to resolve. Injury and disability determinations can be established by the claimant's testimony alone, if believed by the hearing officer. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). It was the hearing officer's prerogative to

believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

PRENTICE HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Edward Vilano
Appeals Judge